

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

- (A) By order approve the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2002-12 and should be submitted by June 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45924; File No. SR-CHX-2002-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

May 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice hereby is given that on April 26, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend a provision of its membership dues and fees schedule (the "Schedule") governing assessment of transaction fees. The text of the proposed rule change follows. Proposed new language is italicized; proposed deletions are in brackets.

Membership Dues and Fees

* * * * *

F. Transaction and Order Processing Fees

* * * * *

6. Transaction Fees

* * * * *

e. *In Nasdaq/NM securities, a[A]gency executions [orders in NASDAQ/NM securities] executed through a floor broker and market maker executions.*

f. *In Dual Trading System issues, a[A]gency executions [orders in Dual Trading System Securities] executed through a floor broker and market maker executions.*

g. All other MAX orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend a provision of the Schedule governing assessment of transaction fees. The Schedule contains provisions assessing various transaction fees and order processing fees. Transaction fees are assessed based on factors including (a) the type of order executed on the Exchange, and (b) the type of member that facilitates execution of the order on the Exchange.

A previous change to the provisions governing transaction fees was intended to provide for a transaction fee applicable to certain manual orders that are not executed by a specialist, *i.e.*, agency orders executed through a floor broker or executions by a market maker. The Exchange believes that it is appropriate to edit this provision to reflect the intent that the provision applies to all manual orders not executed by a specialist (other than executions by floor brokers in their capacity as principals). Significantly, the proposed edit set forth in Exhibit A reflects current billing practice; the change to the fee schedule thus will not result in assessment of any additional transaction fees.

In addition, the Exchange proposed to clarify that the catch-all provision governing transaction fees, subsection g., only applied to all other "MAX" orders.³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4),⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

³ Telephone call between Ellen Neely, Senior Vice President and General Counsel, CHX, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on May 9, 2002.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 17 CFR 200.30-3(a)(12).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by the Exchange relating to this submission.⁶

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and Rule 19b-4(f)(2) thereunder.⁸ Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

⁶ At the request of CHX, this sentence was revised to clarify that the Exchange did not solicit comment from its members. Telephone call between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Ellen Neely, Senior Vice President and General Counsel, CHX, on May 14, 2002.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

the principal office of the CHX. All submissions should refer to File No. SR-CHX-2002-13 and should be submitted by June 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45920; File No. SR-NASD-2002-45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. to Establish Listing Standards and Listing Fees for Portfolio Depository Receipts and Index Fund Shares

May 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 3, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 6, 2002, Nasdaq filed Amendment No. 1 to the proposal.³ On May 13, 2002, Nasdaq filed Amendment No. 2 to the proposal.⁴ The Commission is

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq did the following: (1) Made corrections to its proposed rule text and proposal; (2) added discussion and stated its statutory basis for the proposed listing fees; (3) clarified that its regular trading hours for Portfolio Depository Receipts ("PDRs") and Index Fund Shares ("Fund Shares") will be from 9:30 a.m. to 4 p.m. or 4:15 p.m., as designated by Nasdaq; and (4) requested accelerated approval for the portion of the proposal relating to the listing and trading standards for PDRs and Fund Shares, and not for the portion on the proposed listing fees.

⁴ See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated May 13, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq removed the term

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting partial accelerated approval to the proposal.⁵

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish listing standards and listing fees for PDRs and Fund Shares.

Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), [or] (g), (h), (i), or (j) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualification issues, exception special situations, are included on the next inclusion date established by Nasdaq.

(a)-(h) No change.

(i) Portfolio Depository Receipts

(1) *Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:*

(A) *Portfolio Depository Receipt. The term "Portfolio Depository Receipt" means a security:*

(i) *that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts;*

(ii) *that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount;*

(iii) *that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and*

(iv) *that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of*

"member organization" throughout its proposed rule text and proposal.

⁵ Nasdaq requested accelerated approval of all portions of the proposal except those that deal with its proposed new listing fees.